

IN THE DRAWINGS

Applicants propose to label the blocks in the figures of the drawings in accordance with the accompanying ANNOTATED SHEETS SHOWING CHANGES.

Enclosed herewith are REPLACEMENT SHEETS in which the above changes have been incorporated.

REMARKS

Enclosed herewith is a Substitute Specification in which the specification as filed has been amended in various places to correct typographical and grammatical errors, and to also add section headings.

In support of the above, enclosed herewith is a copy of the specification as filed marked up with the above changes.

The undersigned attorney asserts that no new matter has been incorporated into the Substitute Specification.

The claims have been amended to more clearly define the invention as disclosed in the written description. In particular, claims 1 and 3 have been amended for clarity.

The Examiner has rejected claims 1-4 and 6-8 under 35 U.S.C. 102(e) as being anticipated by U.S. Patent 6,588,015 to Eyer et al. The Examiner has further rejected claim 5 under 35 U.S.C. 103(a) as being unpatentable over Eyer et al.

The Eyer et al. patent discloses a broadcast interactive digital radio. In this broadcasting system, tiers of service level are provided so that paying subscribers can skip some commercials while not-paying subscribers cannot skip the commercials (see Abstract). A user subscribes to a particular level of service, for example a free service or a premium service (col. 2, lines 44-46). In the free service, the user will have to listen to the commercials, while in the premium service he will be free of commercials (col. 2, lines 46-50 and col. 6, lines 57-61).

How this is realized is described in Eyer et al. at col. 2, lines 50-52, where it is explained that only the paying users will be provided with data which indicates access points for the program segments (these access points being used to know the beginnings and ends of at least the commercials). This same explanation is given with reference to Fig. 10 (see for instance col. 16, lines 37-39), where it is explained that the paying user (i.e. the "subscribers") are provided with additional access points which allow bypassing of the commercials. In other words, the non-paying users are not provided with these additional access points. This means that the signals sent by the service provider to the user will depend on the kind of user to which the signals are sent. The paying users will be provided with complete signals (including timing of the commercials) while the non-paying users will be provided with incomplete signals (no timing of commercials).

In the subject invention, as claimed in claim 1, includes the limitations "generating an information signal containing an input program comprising at least one particular event, and control information", and "transmitting said information signal to each user".

As noted in MPEP § 2131, it is well-founded that "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Further, "The identical invention must be shown in as

complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

Applicants submit that while Eyer et al. discloses generating an information signal including "an input program comprising at least one particular event, and control information", contrary to that which is specifically claimed in claim 1, Eyer et al. only sends this information signal to paying users. Non-paying users receive a different information signal in which the control information is NOT included. Hence, the Eyer et al. system must send different information signals depending on the status of the user.

In the subject invention, the same information signal is sent to all users. In order to take advantage of the included control information, the users are provided with a device having selection means which, when enabled and verified by the service provider, is able to use the control information to activate certain desired features of use. These desired features are described in detail in the Substitute Specification page 18, line 22, to page 19, line 12 (paragraph [0044]), depending on the selected and verified subscription, the user device selectively uses the control information to provide the desired features.

In view of the above, Applicants believe that the subject invention, as claimed in claims 1-4 and 6-8, is not anticipated by Eyer et al.

In the previous Office Action, with regard to claim 5, the Examiner had taken "Official Notice that is was notoriously known to one of ordinary skill in the art at the time of the applicant's invention to use graphical interfaces to enable user's to select subscriptions offered and filter content is accordance with user preference. (A evidenced by Serena US 2006/0031415 A1; 610 - fig. 6; fig. 7; par. 47-48)."

In the current Office Action the Examiner states "Applicant's failure to adequately traverse the Examiner's taking of Official Notice in the last Office Action is taken as an admission of the fact(s) noticed."

With regard to claim 5, Applicants do not dispute the existence of graphical interfaces for making a menu selection. However, bearing in mind that claim 5 depends from claim 1, Applicants submit that Ayer et al. and the Official Notice/Admission, neither discloses nor suggests "generating an information signal containing an input program comprising at least one particular event, and control information", and "transmitting said information signal to each user".

Hence Applicants believe that the invention as claimed in claim 5, is not rendered obvious by Eyer et al.

Applicants believe that the subject invention, as claimed, is neither anticipated nor rendered obvious by the prior art, and as such, is patentable thereover.

Applicants believe that this application, containing claims 1-8, is now in condition for allowance and such action is respectfully requested.

Respectfully submitted,

by /Edward W. Goodman/
Edward W. Goodman, Reg. 28,613
Attorney
Tel.: 914-333-9611